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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/997,656	11/29/2001	Richard S. Ohran	14113.21.1	7388
7590	01/12/2005		EXAMINER	
R. Burns Israelsen WORKMAN, NYDEGGER & SEELEY 1000 Eagle Gate Tower Salt Lake City, UT 84111				BONURA, TIMOTHY M
				ART UNIT
				PAPER NUMBER
				2114

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/997,656	OHRAN, RICHARD S.
	Examiner Tim Bonura	Art Unit 2114

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 28 October 2004.  
 2a) This action is FINAL.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-29 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 28 and 29 is/are allowed.  
 6) Claim(s) 1-26 is/are rejected.  
 7) Claim(s) 27 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

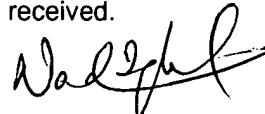
#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 29 November 2001 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.



**NADEEM IQBAL**  
**PRIMARY EXAMINER**

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Bergsten, U.S.

Patent Number 6,499,091.

3. Regarding claim 1:

a. Regarding the limitation of “after losing the data blocks at the primary mass storage device, receiving a first read request that would otherwise be processed by the primary computer system” Bergsten discloses a system that has a map of data which is incremented after a suspension of the first data storage device. (Lines 5-9 of Column 9).

b. Regarding the limitation of “transmitting the first read request to the backup computer system” Bergsten discloses a system that the second data storage device can become the de facto primary storage device after the first data storage unit is suspended. (Lines 48-56 of Column 4).

c. Regarding the limitation of “as the backup computer system returns one or more data blocks from the backup mass storage device in response to the read request, writing the one or more data blocks to a mass storage device associated with the primary computer system” Bergsten discloses a system that once the first storage device is re-

established, data blocks in the map are copied back to the first storage device. (Lines 26-32 of Column 3).

d. Regarding the limitation of "prior to a full copy of the data blocks of the backup mass storage device being restored to the mass storage device associated with the primary computer system, performing the acts of: receiving a second request, wherein the second read request is for at least one of the one or more data blocks that have been written to the mass storage device associated with the primary computer system" Bergsten discloses a system that the map made be of a size large enough to support 0 to n accesses of the primary data storage device. (Lines 18-25 of Column 3).

e. Regarding the limitation of "responding to the second read request using the mass storage device associated with the primary computer system" Bergsten discloses a system that the map is used to respond to the request for the primary storage unit when it is suspended. (Lines 21-23 of Column 3).

4. Regarding claim 2, Bergsten disclose a system that can copy the complete mirror from the second storage device back to the primary storage device over a communications link. (Lines 20-26 of Column 2 and Lines 19-22 of Column 5).

5. Regarding claim 3, Bergsten discloses a system wherein the map stores values that are changed after the primary storage device is suspended. The map is stored separately from the secondary mirror. The mirror is used to rebuild the primary storage device. (Lines 14-27 of Column 2).

6. Regarding claim 4, Bergsten discloses a system with a communication link that allows for fast transfer of the mirror data to re-establish the primary storage device. (Lines 1-5 of Column 5).

7. Regarding claim 6, Bergsten discloses that the system memory devices maybe a removable and a hard drive. (Lines 9-19 of Column 5).

8. Regarding claim 7, Bergsten discloses a system wherein the primary storage device is part of the computer mirror subsystem. (Lines 53-54 of Column 1).

9. Regarding claim 8, Bergsten discloses a system that the map is used to respond to the request for the primary storage unit when it is suspended. (Lines 21-23 of Column 3).

10. Regarding claim 9:

f. Regarding the limitation of "once the data blocks have been lost from the primary mass storage device, the primary computer system accessing the backup mass storage device such that read requests that would have been directed to the lost data blocks are instead directed to the backup mass storage device" Bergsten discloses a system that the map is used to respond to the request for the primary storage unit when it is suspended. (Lines 21-23 of Column 3).

g. Regarding the limitation of "the primary computer system copying data blocks read from the backup mass storage device to create a present copy of the data blocks in the primary mass storage device" Bergsten discloses a system that can copy the complete mirror from the second storage device back to the primary storage device over a communications link. (Lines 20-26 of Column 2 and Lines 19-22 of Column 5).

h. Regarding the limitation of "the primary computer system tracking which read data blocks have been copied to the primary mass storage device using an overwrite map" Bergsten discloses a system with Bergsten discloses a system that once the first storage device is re-established, data blocks in the map are copied back to the first storage device. (Lines 26-32 of Column 3).

i. Regarding the limitation of "creating a static snapshot copy of a selected data set of the backup mass storage device, the static snapshot copy preserving the selected data set as the selected data set existed at a time after the data blocks were lost at the primary mass storage device" Bergsten discloses a system that has a map of data which is incremented after a suspension of the first data storage device. (Lines 5-9 of Column 2).

j. Regarding the limitation of "copying the static snapshot copy to the primary mass storage device except for data blocks that are indicated to be current in the overwrite map" Bergsten discloses a system wherein the map stores values that are changed after the primary storage device is suspended. The map is stored separately from the secondary mirror. The mirror is used to rebuild the primary storage device. (Lines 14-27 of Column 2).

11. Regarding claim 10, Bergsten discloses a system in which the changes in the map can be used to update the primary and second storage devices. (Lines 58-67 of Column 4).

12. Regarding claim 11, Bergsten discloses that the map will increment and decrement values as to keep track of status of data. (Lines 35-45 of Column 3 and Lines 64-65 of Column 4).

13. Regarding claim 12, Bergsten discloses a system with a communication link that allows for fast transfer of the mirror data to re-establish the primary storage device. (Lines 1-5 of Column 5).

14. Regarding claim 13, Bergsten discloses a system with a communication link that allows for fast mirror of data to re-establish the primary storage device. (Lines 1-5 of Column 5).

15. Regarding claim 14, Bergsten discloses the backup is a mirror. Mirroring is known to be a complete data back up of a storage device. (Lines 55-58 of Column 1).

16. Regarding claim 15:

k. Regarding the limitation of "a primary computer having a primary mass storage device where data blocks are stored" Bergsten discloses a system with a primary storage device. (Lines 12-14 of Column 3).

l. Regarding the limitation of "a backup computer having a backup mass storage device where a backup copy of the data blocks is stored prior to the primary mass storage device losing one or more data blocks" Bergsten discloses a system with a mirror second storage device. (Lines 12-14 of Column 3).

m. Regarding the limitation of "a transport link for communicating between the primary computer and the backup computer, such that when the primary mass storage device loses one or more data blocks, the primary computer and the backup computer communicate over the transport link to perform the acts of: directing read requests of the one or more lost data blocks to the backup mass storage device" Bergsten discloses a system with a communication link that allows for fast transfer of the mirror data to re-establish the primary storage device. (Lines 1-5 of Column 5).

- n. Regarding the limitation of "writing at least one data block read from the backup mass storage device to the primary mass storage device" Bergsten discloses a system in which the mirrored data is used to restore the primary storage device. (Lines 20-26 of Column 2).
- o. Regarding the limitation of "taking a first snapshot of the backup mass storage device for preserving the backup data blocks as the backup data blocks existed at a time after the one or more data blocks were lost" Bergsten discloses the backup is a mirror. Mirroring is known to be a complete data back up of a storage device. (Lines 55-58 of Column 1).
- p. Regarding the limitation of "creating a first snapshot copy of the backup data blocks for transferring the backup data blocks to the primary computer" Bergsten discloses the backup is a mirror. Mirroring is known to be a complete data back up of a storage device. (Lines 55-58 of Column 1).
- q. Regarding the limitation of "identifying any of the data blocks in the first snapshot copy that correspond to data blocks the primary computer has not written to the primary mass storage device subsequent to the primary mass storage device losing the one or more data blocks" Bergsten discloses a system that has a map of data which is incremented after a suspension of the first data storage device. (Lines 5-9 of Column 9).
- r. Regarding the limitation of "making the identified data blocks available to the primary computer" Bergsten discloses a system in which the changes in the map can be used to update the primary and second storage devices. (Lines 58-67 of Column 4).

17. Regarding claim 16, Bergsten discloses a system that can copy the complete mirror from the second storage device back to the primary storage device over a communications link. (Lines 20-26 of Column 2 and Lines 19-22 of Column 5).

18. Regarding claim 17, Bergsten discloses a system that can copy the complete mirror from the second storage device back to the primary storage device over a communications link. (Lines 20-26 of Column 2 and Lines 19-22 of Column 5).

19. Regarding claim 18:

s. Regarding the limitation of “experiencing loss of data blocks from the primary computer system” Bergsten discloses a system that detect failure. (Lines 12-16 of Column 3).

t. Regarding the limitation of “accessing the backup mass storage device such that read requests that would have been directed to the lost data blocks are instead directed to the backup mass storage device” Bergsten discloses a system that the map is used to respond to the request for the primary storage unit when it is suspended. (Lines 21-23 of Column 3).

u. Regarding the limitation of “receiving data blocks read from the backup mass storage device and copying the received data blocks to create a present copy of the data blocks in the primary mass storage device” Bergsten discloses a system that can copy the complete mirror from the second storage device back to the primary storage device over a communications link. (Lines 20-26 of Column 2 and Lines 19-22 of Column 5).

v. Regarding the limitation of “tracking which received data blocks have been copied to the primary mass storage device using an overwrite map” Bergsten discloses

that the map will increment and decrement values as to keep track of status of data.

(Lines 35-45 of Column 3 and Lines 64-65 of Column 4).

w. Regarding the limitation of "receiving from the backup computer system a static snapshot copy of a selected data set of the backup mass storage device, the static snapshot copy preserving the selected data set as the selected data set existed at a time after the data blocks were lost at the primary mass storage device" Bergsten discloses a system wherein the map stores values that are changed after the primary storage device is suspended. The map is stored separately from the secondary mirror. The mirror is used to rebuild the primary storage device. (Lines 14-27 of Column 2).

x. Regarding the limitation of "copying the static snapshot copy to the primary mass storage device except for data blocks that are indicated to be current in the overwrite map" Bergsten discloses a system wherein the map stores values that are changed after the primary storage device is suspended. The map is stored separately from the secondary mirror. The mirror is used to rebuild the primary storage device. (Lines 14-27 of Column 2).

20. Regarding claim 19, Bergsten discloses a system in which the changes in the map can be used to update the primary and second storage devices. (Lines 58-67 of Column 4).

21. Regarding claim 20, Bergsten discloses that the map will increment and decrement values as to keep track of status of data. (Lines 35-45 of Column 3 and Lines 64-65 of Column 4).

22. Regarding claim 21, Bergsten discloses a system with a communication link that allows for fast transfer of the mirror data to re-establish the primary storage device. (Lines 1-5 of Column 5).

23. Regarding claim 22, Bergsten discloses a system with a communication link that allows for fast transfer of the mirror data to re-establish the primary storage device. (Lines 1-5 of Column 5).

24. Regarding claim 23, Bergsten discloses the backup is a mirror. Mirroring is known to be a complete data back up of a storage device. (Lines 55-58 of Column 1).

25. Regarding claim 24:

y. Regarding the limitation of "generating read requests for data blocks that have been lost in a primary mass storage device," Bergsten discloses a system with a communication link that allows for transfer of the mirror data to re-establish the primary storage device. (Lines 1-5 of Column 5). Bergsten discloses that map entries can be created for reestablishment of the primary storage device. (Lines 58-62 of Column 4).

z. Regarding the limitation of "directing each read request for a first data block to a backup mass storage device, wherein the data block returned from the backup mass storage device is written to the primary mass storage device," Bergsten discloses a system that the second data storage device can become the de facto primary storage device after the first data storage unit is suspended. (Lines 48-56 of Column 4). Bergsten discloses a system that once the first storage device is re-established, data blocks in the map are copied back to the first storage device. (Lines 26-32 of Column 3).

aa. Regarding the limitation of "directing each read request for a second data block to the primary mass storage device if the second data block has already been written to the primary mass storage device in response to a previous read request," Bergsten discloses a system that the map made be of a size large enough to support 0 to n accesses of the

primary data storage device. (Lines 18-25 of Column 3). Bergsten discloses a system that the map is used to respond to the request for the primary storage unit when it is suspended. (Lines 21-23 of Column 3).

26. Regarding claim 25, Bergsten discloses a system in which the changes in the map can be used to update the primary and second storage devices. (Lines 58-67 of Column 4).
27. Regarding claim 26, Bergsten discloses that the map will increment and decrement values as to keep track of status of data. (Lines 35-45 of Column 3 and Lines 64-65 of Column 4).

***Claim Rejections - 35 USC § 103***

28. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

29. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bergsten as applied to claim 1 above, and further in view of McDowell, U.S. Patent Number 6,389,459.
30. Regarding claim 5, Bergsten discloses a system with mirror storage devices. Bergsten does not disclose a system with a separate storage device that is not mirrored. McDowell discloses a system with non-mirrored storage devices. (See Figure 2 item 233). It would have been obvious to one of ordinary skill in the art at the time of the invention to include a non-mirrored storage device such as disclosed by McDowell in the system of Bergsten. One of ordinary skill would have been motivated because Bergsten discloses that the instructions of the mirroring system can be stored in memory of the appliances or the device.

***Response to Arguments***

31. Applicant's arguments filed 10/28/2004 have been fully considered but they are not persuasive.

32. Regarding the arguments for claim 1:

bb. Regarding the applicant argues that the reference of Bergsten does not teach the limitation of "losing the data blocks at the primary mass storage device" by stating "the data blocks of Bergsten are not lost," but "rather the first storage device in Bergsten is prevented from receiving and storing data blocks." (Page 15 of the arguments). The examiner contends that Bergsten does discloses that operational failure of the first storage device (Lines 14-16 of Column 3) would constitute a losing of data blocks.

cc. Regarding the argument that Bergsten depends on the teaching that the data one the primary storage device is not lost and therefore, "one of skill in the art would not use a map of entries made after operation of the storage device was suspended to restore existing data that has been lost." (Page 16 of the arguments). The examiner contends that data block can be lost (see above argument) and therefore Bergsten using of a map is valid in cases in which operational failure occurs.

dd. Regarding the argument that Bergsten does not enable the primary computer system to perform act of "receiving a second request, wherein the second read request is for at least one of the one or more data blocks that have been written to the mass storage device associated with the primary computer system" (Page 17 of the arguments). The

examiner contends that the computer system has the ability to receive request after the first storage device is suspended. (Lines 19-23 of Column 3).

33. Regarding the arguments for claims 2-4 and 6-23 please refer to comments above regarding claim 1.
34. Regarding the arguments for claim 5, please refer to comments above regarding claim 1.

***Allowable Subject Matter***

35. Claim 27 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
36. The following is a statement of reasons for the indication of allowable subject matter:
37. Regarding claim 27, the prior art of record fails to teach the limitation of “taking a static snapshot of the backup mass storage device; and writing the static snapshot to the primary mass storage device, wherein data blocks in the static snapshot that correspond to current data blocks in the overwrite map are not written to the primary mass storage device.”
38. Claims 28-29 are allowed.
39. The following is an examiner’s statement of reasons for allowance:
40. Regarding claim 28, the prior art of record fails to teach the limitation of “establishing a second channel of restoration comprising: taking a snapshot of the backup storage device; and copying the snapshot to the primary mass storage device through an overwrite map, wherein data blocks identified as current in the overwrite map are not copied from the snapshot to the primary mass storage device.”

41. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

*Conclusion*

42. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

43. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

44. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Tim Bonura**.

- The examiner can normally be reached on **Mon-Fri: 8:30-5:00**.
- The examiner can be reached at: **571-272-3654**.

45. If attempts to reach the examiner by telephone are unsuccessful, please contact the examiner's supervisor, **Rob Beausoliel**.

- o The supervisor can be reached on **571-272-3645**.

46. The fax phone numbers for the organization where this application or proceeding is assigned are:

- o **703-872-9306 for all patent related correspondence by FAX.**

47. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov/>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

48. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **receptionist** whose telephone number is: **571-272-2100**.

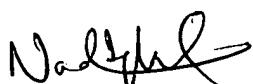
49. Responses should be mailed to:

- o **Commissioner of Patents and Trademarks**

**P.O. Box 1450**

**Alexandria, VA 22313-1450**

Tim Bonura  
Examiner  
Art Unit 2114



tmb

January 8, 2005

**NADEEM IQBAL**  
**PRIMARY EXAMINER**